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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN RE APPLICATION OF: CC DOCKET NO. 94-136
FCC 95M-21 50731

ELLIS THOMPSON CORPORATION

For facilities in the Domestic
Public Cellular Radio Telecom-
munications Service on Frequency
Block A in Market Number 134,
Atlantic City, New Jersey

DOCKET FILE COPY ORIGINAL

DATE OF CONFERENCE: January 27, 1995 VOLUME: 1
PLACE OF CONFERENCE: Washington, D.C. PAGES: 1 - 42

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In re Application of: :
Ellis Thompson Corporation : CC Docket No. 94-136
Atlantic City, New Jersey : FCC 95M-21 50731
- - - - -x

The above-entitled matter came on for prehearing
conference pursuant to notice before Judge Joseph Chachkin,
Administrative Law Judge, at 2000 L Street, N.W., Suite 201,
Washington, D.C. in Courtroom Number Three on Friday, January
27, 1995 at 9:00 a.m.

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 APPEARANCES:

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23 On Behalf of American Cellular Network Corporation:

24 LOUIS GURMAN, ESQUIRE
25 WILLIAM FREEDMAN, ESQUIRE
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22 On Behalf of Wireless Telecommunications Bureau:

23 JOSEPH WEBER, ESQUIRE
24 TERRENCE REIDELER, ESQUIRE
25 1919 M Street, N.W.
Room 644
Washington, D.C. 20554

I N D E X

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25	Hearing Began: <u>8:30 a.m.</u> Hearing Ended: <u>10:00 a.m.</u>

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◆ P R O C E E D I N G S

1
2 JUDGE CHACHKIN: Let's go on the record. This
3 proceeding concerns an application by Ellis Thompson
4 Corporation for facilities in Domestic Public Cellular Radio
5 Telecommunications Service on Frequency Block A in Market
6 Number 134 in Atlantic City, New Jersey. May I have the
7 appearances on behalf of the parties? On behalf of Ellis
8 Thompson Corporation?
9 MR. FELDSTEIN: Yes. Stuart Feldstein.
10 MR. RUBIN: Richard Rubin.
11 MR. LARSON: Steve Larson.
12 MR. STOLL: Robert Stoll.
13 JUDGE CHACHKIN: On behalf of American Cellular
14 Network Corporation?
15 MR. GURMAN: Louis Gurman.
16 MR. FREEDMAN: William Freedman.
17 MR. HOFFMAN: And Allan Hoffman.
18 JUDGE CHACHKIN: On behalf of Telephone and Data
19 Systems, Inc.?
20 MR. NAFTALIN: Alan Naftalin and Herbert D. Miller,
21 Your Honor, for Koteen and Naftalin, and Alan Salpeter for
22 Mayer, Brown and Platt.
23 JUDGE CHACHKIN: And on behalf of the Chief,
24 Wireless Telecommunications Bureau?
25 MR. WEBER: Joseph Weber.

1 MR. REIDELER: And Terrence Reideler.

2 JUDGE CHACHKIN: All right. I received a joint
3 report on a proposed discovery schedule and in that same
4 connection, I also granted a motion to extend the time for --
5 I guess it is for American -- for Amcell and Thompson to
6 produce documents to T.D.S. Any other changes necessary?
7 What is the situation currently? Go ahead, Counsel.

8 MR. GURMAN: Your Honor, Lou Gurman for American
9 Cellular. The motion we filed last Friday contemplated some
10 additional time in order to reach a settlement of long-
11 standing civil litigation that's been going on concerning the
12 Atlantic City market, in State Court in Oregon and in Federal
13 Court here in Washington, D.C.

14 And I'm pleased to report that during this week, the
15 parties have been able to reach a firm agreement in principle
16 and are looking toward preparing and executing a definitive
17 settlement agreement within the next thirty days. We've had
18 discussions with counsel for the Wireless Bureau and the
19 Wireless Bureau is prepared to support us in a request to
20 continue those procedural dates for another forty days.

21 Within thirty days, what we would propose to do is
22 submit to you a copy of the definitive settlement agreement
23 and a motion for approval of that settlement agreement, and
24 then within the following ten days, both you and the Bureau
25 would have an opportunity to review that document.

1 The F.C.C. component of the settlement would
2 actually involve the withdrawal of T.D.S.'s Petition to Deny
3 appending the transfer application that's been pending
4 approximately two years. Civil litigation predates that. It
5 goes back to 1988.

6 But since that transfer application is not in this
7 proceeding, nor is the petition to deny, it seems to the
8 parties that under 22.129 of the Commission's rules, either
9 the Bureau or the Commission would have to rule on the
10 withdrawal of the Petition to Deny, and we've had discussions
11 with the Bureau about the procedure that we're speaking about
12 here and I believe they're willing to support us in terms of
13 the procedure, obviously leaving open consideration on the
14 merits of the settlement until they actually see the final
15 document.

16 JUDGE CHACHKIN: Does the Bureau have any comments?

17 MR. WEBER: No. We agree with Mr. Gurman that we do
18 support the stay of procedural dates for forty days until they
19 can file their settlement and then give both yourself and the
20 Bureau a chance to review the settlement agreement.

21 JUDGE CHACHKIN: But, how does that impact on
22 Atlantic City, where the Commission put in a real party in
23 interest issue? I mean, how does that remove that issue?

24 MR. GURMAN: We don't believe that it removed the
25 issue in any way, Your Honor, and I think all the parties

1 recognize that an absolutely essential ingredient for their
2 settlement to go forward is that first, the obligations under
3 the Hearing Designation Order have to be fulfilled.

4 JUDGE CHACHKIN: Well, how is that going to be done?

5 MR. GURMAN: Well, the way -- first of all, the
6 parties have already been gathering a substantial amount of
7 documentation in terms of discovery and have been working over
8 the last thirty days and have reached agreements with the
9 Bureau as far as production dates and whatnot. Then if the
10 Commission or the Bureau approves the T.D.S. withdrawal of the
11 petition and otherwise approves the settlement, obviously
12 T.D.S. would not have an economic interest in pursuing this
13 proceeding.

14 However, we would -- you know, we would seek some
15 guidance from you as to exactly what role T.D.S. would
16 continue to play in a proceeding at that juncture. However,
17 T.D.S. has indicated to me -- and Mr. Naftalin, correct me if
18 I'm wrong -- has indicated that they would be fully willing to
19 work with the Bureau to make certain that evidence is adduced
20 on the designated issue.

21 And we recognize that we would have to produce
22 sufficient evidence that you could find that Mr. Thompson is,
23 in fact, qualified and a prerequisite to grant of that
24 transfer application in Atlantic City would first have to be a
25 finding of qualification in this proceeding.

1 JUDGE CHACHKIN: Well, now, I'm getting confused.
2 Is this settlement that you're proposing contingent on the
3 grant of this application?

4 MR. GURMAN: Yes, it is.

5 JUDGE CHACHKIN: Well, then, what's the purpose of
6 going forward with this settlement and waiting forty days to
7 file the settlement agreement if it's all contingent upon
8 what's taking place in this hearing, since we're going to be
9 at the same situation forty days from now that we are today,
10 still having to resolve this application?

11 MR. GURMAN: I guess first and foremost, Your Honor,
12 is the fact that this litigation has been protracted and been
13 going on for eight years, and during this period, parties
14 being -- human nature being what it is, parties tend to settle
15 when deadlines are close, and these last seven days, where you
16 granted us this additional time, has really born fruit and
17 they have, for the first time, in all this litigation -- and
18 incidently, they've been trying to settle the case for more
19 than two, perhaps three years or more. They have finally
20 reached a firm agreement in principle.

21 So if nothing else, by putting a moratorium for the
22 next thirty days on any further adversarial filings, I think
23 we would give these parties an opportunity to reach a
24 definitive settlement agreement, and you know, for that reason
25 alone, I think it would be a worthwhile thing to do.

1 And the Bureau supports this as being in the public
2 interest because during these past years, there's been a
3 constant spillover of the civil litigation into F.C.C.
4 proceedings and it would seem that if the civil litigation
5 component could be encapsulated, there could be benefits in
6 this proceeding in terms of it not being escalated and
7 focusing narrowly on the designated issue.

8 JUDGE CHACHKIN: Yeah, but at some point, we're
9 going to have to come face to face with the issues in this
10 case and Mr. Naftalin -- T.D.S. presumably will have to put
11 forth their evidence in support of a real party in interest
12 issue. So I don't know how you're going to avoid, at some
13 point, this confrontation, you know, and this good feeling or
14 whatever. The facts are going to have to come in and
15 -- I don't understand how the civil litigation -- well, Mr.
16 Naftalin, go ahead.

17 MR. NAFTALIN: Thank you, Your Honor.

18 JUDGE CHACHKIN: I don't understand what advantage
19 there is in putting it off. It would seem to me you would
20 want to have this expedited and so then you could be able to
21 move along and the settlement that you proposed to the
22 Commission or whoever would then have real meaning if, in
23 fact, depending on what happens at the outcome of this
24 proceeding. I mean, I don't understand. It seems to me
25 you're taking the horse before the cart. But go ahead.

1 MR. NAFTALIN: Your Honor, the parties have been
2 contending over this -- over the question of whether -- over
3 the question of Atlantic City for at least seven years.
4 T.D.S. and Amcell in particular have been at odds during that
5 whole period in litigation. If the settlement -- if there is
6 an agreement which we -- if the agreement can be reduced to
7 writing and if the settlement agreement is approved by the
8 Commission --

9 JUDGE CHACHKIN: Well, what would be the agreement
10 that the Commission would approve? I don't understand if it's
11 contingent on the resolution in this proceeding.

12 MR. NAFTALIN: Well, the issue that we are going to
13 be presenting is whether the form of a settle -- we -- whether
14 the form of a settlement agreement is consistent with the
15 Commission's rules about not having payoffs. We think it
16 entirely is. The Bureau has taken the view that in principle,
17 it looks satisfactory, but they need to see the documents. We
18 need to know for sure whether we are at war with Amcell or
19 we're not. If we are, it's obvious that our posture in the
20 case will be very different than if we have -- if peace has
21 broken out. If peace had broken out, then we will meet our
22 requirements under the -- under the -- under the Hearing
23 Designation Order.

24 But obviously our posture, we will then have an
25 interest in having -- our posture will be different because we

1 will have an interest in having the case resolved favorably to
2 Amcell. We have never taken the position that Thompson should
3 lose its license, but obviously we've been at odds with
4 Amcell. If the settlement is approved, we would -- we would
5 meet our burden of going forward with the --

6 JUDGE CHACHKIN: Well, let me -- before you go
7 forward, what is this settlement agreement that you're going
8 to present to the Commission? What exactly are you going to
9 present to the Commission?

10 MR. NAFTALIN: Essentially, it's as follows. The --
11 T.D.S. and its -- I'll treat all the subsidiaries as part of
12 T.D.S. T.D.S. will settle the -- with Amcell and Thompson,
13 will settle litigation in Oregon and in the District of
14 Columbia over the Atlantic City matter.

15 JUDGE CHACHKIN: Is this before the Commission?

16 MR. NAFTALIN: That's -- no, those cases are before
17 -- the cases are in -- are -- these are not appeals from the -
18 -

19 JUDGE CHACHKIN: That's what I had said. This is in
20 litigation in the courts.

21 MR. NAFTALIN: These are court litigations. The
22 subject matter is the Atlantic City system.

23 JUDGE CHACHKIN: I understand the issue in this case
24 involves Atlantic City. But then there's Vineland apparently
25 and some other systems.

1 MR. NAFTALIN: Step One is that T.D.S. will settle
2 the litigation, will assign -- it has a ten percent interest
3 in Atlantic City now. It will sell that to Amcell. It will
4 also sell the option or transfer the option that it has to
5 acquire Atlantic City to Amcell and it will sell the Vineland
6 system to Amcell. Vineland is surrounded by Amcell's other
7 system. If it can't have Atlantic City, Vineland is much more
8 valuable to -- it makes more sense to have Amcell have it or
9 Comcast have it than T.D.S. That is the settlement and that -
10 - and --

11 JUDGE CHACHKIN: Now, who are you going to make this
12 -- propose this settlement to?

13 MR. NAFTALIN: We are filing the settlement
14 agreement. We know we must file it with the Bureau. We are
15 certainly -- we were also going to file it with you. We are
16 unclear as to whether your approval is, under the rules, is
17 called for or not, but we'll present it to you. At that
18 point, you can decide whether you think whether it -- whether
19 you believe that your consent is called for.

20 If it is, we will obviously ask you to grant it. At
21 such points as the -- and Bureau would have to -- or the
22 Commission would be asked to consent to our withdrawing the
23 Petition to Deny the transfer of Atlantic City which is
24 outside of this hearing.

25 JUDGE CHACHKIN: What would be the reason for you

1 wanting to withdraw the Petition to Deny? You still have to
2 go forward with the issue, so what's the point in that?

3 MR. NAFTALIN: It will reflect the fact that if the
4 -- that this hearing will resolve that question, that is if
5 here you will find -- there's nothing in the Petition to Deny
6 that is not comprehended within the hearing issue. Therefore,
7 upon the -- the outcome of this hearing will decide whether
8 there is a transfer application -- whether there's anything to
9 transfer. If the transfer is -- if the hearing confirms
10 Thompson's qualifications, it will necessarily have taken up
11 the matters that we put in the transfer -- in the Petition to
12 Deny.

13 JUDGE CHACHKIN: Well, I don't understand it. How
14 --

15 MR. NAFTALIN: Our problem is -- our problem is as
16 follows. If the Commission is not going to approve the
17 settlement --

18 JUDGE CHACHKIN: Well, how can the Commission
19 approve the settlement if -- until the issues in this case are
20 resolved? Because how can the Commission approve the sale of
21 your interest --

22 MR. NAFTALIN: Your Honor, we're not asking that it
23 decide the transfer application. We're just asking do they --
24 is the settlement itself consistent with the rules?

25 JUDGE CHACHKIN: And what you're concerned about is

1 whether you want to make a -- pay a certain amount? Is that
2 what you're talking about?

3 MR. NAFTALIN: Yeah.

4 JUDGE CHACHKIN: Wouldn't it be better, if this is
5 your concern, to file some kind of request to the Commission,
6 I don't know, a declaratory ruling or something?

7 MR. NAFTALIN: We tried -- Your Honor, we tried that
8 informally and we were told by the people in the General
9 Counsel's office that because this was in a hearing before
10 you, they didn't want to have anything to do with it.

11 JUDGE CHACHKIN: How do you expect the Commission to
12 -- how is it going to change? You mean, you're going to --

13 MR. NAFTALIN: Well, because we will be presenting
14 the matter --

15 JUDGE CHACHKIN: But I can't rule on the matter
16 obviously. First of all, I can't rule on the matter until I
17 resolve the issue. So all it'll do will be lying before me.
18 I can't rule on the settlement.

19 MR. GURMAN: Your Honor, this is more in the nature
20 of a -- the procedure we contemplated is more in the nature of
21 a declaratory ruling from the Commission. Technically, the
22 Commission doesn't really approve of a settlement agreement.
23 The rule that I cited at the outset, 22.129, merely says that
24 the Commission has to approve the withdrawal of a Petition to
25 Deny and if they approve the withdrawal of a Petition to Deny

1 and are able to find that under the terms of this settlement,
2 whether or not it ever goes forward, that T.D.S.'s
3 consideration had nothing to do with the withdrawal of the
4 Petition to Deny, but really the consideration is applicable
5 to the settlement of the civil case and the sale of its
6 Vineland property and the sale of its minority interest in
7 Atlantic City. With that sort of a declaratory ruling about
8 the withdrawal of that petition, I think Mr. Naftalin
9 -- and step in and correct me if I'm wrong -- would feel
10 greater comfort in terms of his posture in this proceeding
11 because it would more reflect the economic reality that his
12 client, now that this settlement has been reached, obviously -
13 - and that -- the source of the litigation has always been
14 here, the contract claims, you know, the two parties vying
15 over who has the contractual right to acquire the interest of
16 Ellis Thompson.

17 So the concern here, Your Honor, quite candidly,
18 would be T.D.S. being in the role of a prosecutor in the one
19 hand and on the other hand, having reached a settlement of
20 civil litigation, that it's very difficult to separate one
21 from the other, where there it has the incentive to see the
22 Atlantic City transfer application, you know, go through and
23 being in this proceeding as his Ellis advocate.

24 And so I think the thought was that with a
25 Commission approval of just the mechanism of the withdrawal of

1 the Petition to Deny, that might offer some further
2 clarification on their role in this proceeding.

3 JUDGE CHACHKIN: Well, that's -- that's what
4 confuses me. Their role is, according to the Designation
5 Order, to come forward with evidence, initially come forward
6 with evidence. That's their role. They don't have the burden
7 of proof. Initially come forward with evidence. That's their
8 role. How could that change whether or not the Petition to
9 Deny is withdrawn and what is the purpose?

10 It seems to me it's an idle gesture to withdraw the
11 Petition to Deny if they have to come forward with the
12 evidence and they still remain a party. I mean, I don't
13 understand what -- why this has any meaning. It seems to me
14 everything, from what I understand, all depends on what -- on
15 how this case is resolved. That's where it is.

16 That's -- I mean, all we're talking about is we're
17 still -- that that's the fact of the matter. That's where it
18 all depends on. I mean, all these maneuvers and all mean
19 nothing and they all depend on how this case is resolved. So
20 it would seem to me you can reach an agreement in principle or
21 even sit down and write an agreement contingent on the
22 resolution of this proceeding.

23 But the Commission is not going to determine -- is
24 not going to approve or disapprove the agreement since it's
25 all dependent on the resolution -- in fact, you're putting in

1 a contingency in the agreement. So how do you expect the
2 Commission or me to resolve anything, to approve anything if
3 there's nothing to approve? Because we can't approve anything
4 until this case is resolved. It seems to me we're going
5 through all kinds of idle gestures here and accomplishing
6 nothing.

7 MR. NAFTALIN: Can I take another swing at it,
8 please?

9 JUDGE CHACHKIN: Go ahead.

10 MR. NAFTALIN: We want -- we need -- our concern is
11 that if the settlement is -- if the -- if the -- not the
12 outcome, that is not the question of whether or not the
13 transfer is approved or not, but whether or not the settlement
14 agreement itself is consistent with the rules.

15 JUDGE CHACHKIN: Well, the Bureau can advise you on
16 that.

17 MR. NAFTALIN: Yes. And the Bureau is prepared to
18 advise us on that once they see the document. But we won't
19 know -- we can't do the document -- we want the time to be
20 able to file the document and have them look at it and we do
21 not want to have lost our rights to file a Motion to Enlarge
22 Issues in the meantime.

23 JUDGE CHACHKIN: Now we're getting a little more
24 confusing than we were before.

25 MR. NAFTALIN: That's what I -- we said that in our

1 -- in our joint motion as filed.

2 JUDGE CHACHKIN: And the Motion to Enlarge Issues,
3 was that concerning the 165 question? Is that what we're
4 talking about here?

5 MR. NAFTALIN: I'm sorry, Your Honor?

6 JUDGE CHACHKIN: Does the Motion to Enlarge concern
7 the question of whether or not they should've filed this
8 execution or this agreement to go ahead with the agreement two
9 years ago? Is that what we're talking about?

10 MR. NAFTALIN: No, Your Honor.

11 JUDGE CHACHKIN: Oh, you have something else in
12 mind. All right.

13 MR. NAFTALIN: Well, yes.

14 MR. FREEDMAN: Your Honor, can I try to take a shot
15 at confusing it?

16 JUDGE CHACHKIN: Go ahead.

17 MR. FREEDMAN: I think the reason that the parties
18 are requesting the brief continuance that they're requesting
19 is that as a result of the pressure of this case having been
20 designated and going forward, they finally have been able to
21 do in the last week what has been impossible for the last
22 three years, which is come close and actually getting an
23 agreement in principle to resolve some very, very complex
24 civil litigation that has an impact on the public interest and
25 that it has an impact on the Atlantic City market and

1 potentially a number of contiguous cellular markets in the New
2 Jersey and northeastern area of the United States. The
3 request for the continuance is to allow the parties to devote
4 their energies for the next thirty days to resolve that
5 litigation.

6 JUDGE CHACHKIN: Well, let me make clear. I have no
7 problem with the parties wanting thirty days to complete the
8 agreement before we go ahead with dates. I have no problem
9 with it. My problem is what happens after these thirty days
10 if we -- are we waiting for some rulings by the Commission?
11 That's my problem.

12 I have -- if that's all you want, is official thirty
13 days and we set discovery and all the other dates so that we
14 allow you the thirty days so you can finish the agreement,
15 that's one thing. But that's not what we're talking about
16 here. What we're talking about here is after these agreements
17 are completed, then there would be apparently an effort to
18 submit these agreements to somebody, the Commission or me, and
19 for some kind of resolution which is not possible because the
20 resolution is contingent on what happens in this proceeding.
21 That's the hang-up here.

22 MR. NAFTALIN: But Your Honor, the Bureau has said
23 that they would undertake, once they see it, to try to get it
24 resolved as quickly as they can.

25 JUDGE CHACHKIN: Well, how could they get it

1 resolved? All they can --

2 MR. NAFTALIN: Because they don't need to decide the
3 question of whether the transfer is granted or not. They only
4 need to decide whether the form of the agreement meets the
5 rules against improper payoffs. That's what we're interested
6 in.

7 JUDGE CHACHKIN: But I would assume that -- first of
8 all, how long is it going to take to actually -- you say you
9 have an agreement in principle. How long is it going to take
10 to put these words down on paper?

11 MR. NAFTALIN: Between -- we have asked -- we are
12 asking for thirty days to get them on paper and to file a
13 motion.

14 JUDGE CHACHKIN: Well, what is this motion you're
15 going to file? If you want approval of the parties, if you
16 want to know what the Bureau's position on it, you could ask
17 the -- I mean, you could -- on the basis of your settlement in
18 principle, presumably you could -- the Bureau could give you
19 an opinion. If all you're going to do is put it on paper --

20 MR. NAFTALIN: We've had an in-- Your Honor, we've
21 had an informal view from Commission counsel who --

22 JUDGE CHACHKIN: Well, that's all you're going to
23 get.

24 MR. NAFTALIN: Hang on, who indicates -- pardon me --
25 - who indicates that once the documents are in writing, he

1 hopes to be able to get a formal ruling for it.

2 JUDGE CHACHKIN: Formal ruling from whom?

3 MR. NAFTALIN: From --

4 JUDGE CHACHKIN: I'm not going to give you a formal
5 ruling.

6 MR. WEBER: Your Honor, actually there can be a
7 ruling. All T.D.S. would be asking is to withdraw their
8 Petition to Deny the transfer application. The Commission or
9 the Bureau can rule on that even with this -- before this
10 proceeding is resolved, since all they're doing is withdrawing
11 a pleading. Our rules will require that if they withdraw a
12 pleading, that they have to file the paperwork stating what
13 they're getting in consideration for the withdrawal of that
14 pleading, and then the Bureau can approve that if it is
15 consistent with our rules.

16 JUDGE CHACHKIN: What happens then to their
17 responsibility to go forward in this case if they can withdraw
18 as a party?

19 MR. WEBER: As I understand it, they will still put
20 forth the case as they did -- put forth the same facts they
21 did which got the case designated in the first place. After
22 that point, I think they -- my understanding is they'll be
23 more of a passive party. The Bureau does intend to still
24 investigate this case to the fullest and be a full participant
25 and determine whether or not Ellis Thompson is qualified to

1 retain the license.

2 JUDGE CHACHKIN: Well, that's --

3 MR. WEBER: I mean, I understand T.D.S. is just
4 contemplating being more of a passive party after they put
5 forth the case they did which led to the designation of the
6 proceeding in the first place.

7 JUDGE CHACHKIN: Are you saying under the rules, you
8 can -- you can, at this stage, even though it's in the hearing
9 stage, you can grant their right to withdraw as a party?

10 MR. WEBER: I don't -- I don't believe they're
11 withdrawing as a party and no, I don't think they have the
12 right to do that.

13 JUDGE CHACHKIN: Then what is this dismissal of
14 petition --

15 MR. NAFTALIN: We would withdraw --

16 JUDGE CHACHKIN: The petition has been filed. We're
17 now at a hearing stage. What effect in practical terms does
18 it have if you grant that motion and dismiss the petition?
19 What practical effect does that have on anything?

20 MR. WEBER: At this instant, I don't think it has
21 any practical effect.

22 JUDGE CHACHKIN: That's why I don't understand what
23 we're -- go ahead, Mr. Feldstein.

24 MR. FELDSTEIN: There are two separate proceedings.
25 One is the transfer of control which is -- which is not here

1 in this hearing.

2 JUDGE CHACHKIN: Where is the transfer of control?

3 MR. FELDSTEIN: That is at the Bureau level and that
4 is where they have a Petition to Deny.

5 JUDGE CHACHKIN: Now, wait a minute. Now, I'm being
6 thrown for a loop. Is there pending a Petition to Deny which
7 has not been acted on by the Commission?

8 MR. FELDSTEIN: Yes.

9 MR. NAFTALIN: That's correct.

10 JUDGE CHACHKIN: Well, I didn't know anything about
11 that.

12 MR. FELDSTEIN: And that is where -- that is
13 precisely -- that is precisely where the settlement comes in.
14 It's a withdrawal of the Petition to Deny the transfer of
15 control. Obviously the Bureau will not be able to grant the
16 transfer of control until you finally decide whether Ellis
17 Thompson has something to transfer.

18 So what their settlement is about is a global
19 settlement of the civil litigation to get out of the transfer
20 -- to withdraw their Petition to Deny. The Bureau has
21 indicated that it would bifurcate the transfer of control
22 proceeding. It would act on whether the settlement agreement
23 to withdraw the Petition to Deny is valid under the Commission
24 rules. Then it would hold action on the transfer of control
25 application until this proceeding was finished.